

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
NYNEX LONG DISTANCE COMPANY, dba)
VERIZON ENTERPRISE SOLUTIONS and)
BELL ATLANTIC COMMUNICATIONS, INC.,)
dba VERIZON LONG DISTANCE)
For An Exemption and/or Waiver or,)
Alternatively, for Approval of)
Proposed Transaction.)

DOCKET NO. 2008-0171

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

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FILED

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_____)	

DECISION AND ORDER

By this Decision and Order, the commission approves the proposed reorganization of NYNEX LONG DISTANCE COMPANY, dba VERIZON ENTERPRISE SOLUTIONS ("VES") and BELL ATLANTIC COMMUNICATIONS, INC., dba VERIZON LONG DISTANCE ("VLD") (collectively, "Applicants"), whereby VES and VLD would become subsidiaries of Verizon New York Inc. ("VZ-NY"), as described in the application filed on August 29, 2008 ("Proposed Transaction").

I.

Background

Applicants are Delaware corporations that provide operator services and travel card services in Hawaii, pursuant to certificates of authority ("COAs") issued by the commission. VES was granted a COA by the commission in Decision and Order No. 14967, filed September 3, 1996, in Docket No. 96-0250,

while VLD was granted a COA by Decision and Order No. 17375, filed on November 16, 1999, in Docket No. 99-0345.

According to Applicants, VZ-NY is a local exchange carrier, which provides a wide range of telecommunications services throughout New York, and in a portion of Connecticut; VZ-NY is not certificated in Hawaii and does not provide any intrastate telecommunications services in Hawaii.

Verizon Communications Inc. ("Verizon"), a Delaware corporation, is the ultimate parent of VES, VLD, and VZ-NY. It is not authorized to operate as a public utility, but is the parent company for the following commission-regulated entities: VES, VLD, Verizon Select Services Inc.,¹ and Verizon Hawaii International Inc.² Verizon is also the parent company of Verizon Wireless, which provides wireless voice and data services in Hawaii.

A.

Application

On August 29, 2008, Applicants filed an application requesting an exemption or waiver of HRS § 269-19 or any other applicable provision of HRS Chapter 269; or in the alternative,

¹Decision and Order No. 15321, filed on January 21, 1997, in Docket No. 96-0466.

²Decision and Order No. 16090, filed on November 18, 1997, in Docket No. 97-0383.

commission approval of the Proposed Transaction ("Application").³ According to Applicants, under the proposed reorganization, the capital stock of VES and VLD would be transferred to VZ-NY; VES and VLD would become subsidiaries of VZ-NY; and VES' COA would vest in the limited liability company, Verizon Enterprise Solutions LLC, and VLD's COA would vest in the limited liability company, Verizon Long Distance LLC.⁴

Applicants state that an exemption or waiver of the approval requirements for the Proposed Transaction should be granted as Applicants are non-dominant carriers and the services they provide are competitive.⁵ In addition, Applicants assert that the proposed reorganization will be seamless and transparent to Applicants' Hawaii customers; will not result in any change in rates, service quality or operating terms or conditions; will not result in a change in management, and will permit the realization of significant tax savings resulting in reduced costs to the companies allowing them to compete more effectively.⁶

In the alternative, if an exemption or waiver is not granted, Applicants request approval of the Proposed Transaction, pursuant to HRS § 269-19.

³Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

⁴Application, at 3-4.

⁵Application, at 5.

⁶Application, at 5-6.

B.

Consumer Advocate's Position

On October 1, 2008, the Consumer Advocate filed its Statement of Position ("CA SOP") informing the commission that it does not support a commission waiver of the approval requirements for the Proposed Transaction. The Consumer Advocate, however, does not object to approval of the Proposed Transaction.

II.

Discussion

A.

Request for Waiver

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS Chapter 269 or any rule, upon a determination that a waiver is in the public interest. Where the commission finds, however, that an applicant plays a significant role in the telecommunications industry, the commission may deny a request for a waiver under HRS § 269-16.9(e).⁷

⁷See, e.g., In re Sprint Long Distance, Inc., Docket No. 2006-0060, Decision and Order No. 22462 (May 11, 2006) (denying a waiver request where competition did not serve the same purpose as public interest regulation).

Here, the commission agrees with the Consumer Advocate that a waiver of the commission's approval requirements is inappropriate. While Applicants may be non-dominant carriers in the State and the services they provide may be competitive, competition in this instance may not serve the same purpose as public interest regulation, as Applicants' ultimate parent, Verizon, has a significant presence in Hawaii through its several authorized subsidiaries. As noted by the Consumer Advocate, a subsidiary of Verizon was until recently the State's ILEC, and "[m]any of the influences of Verizon and its subsidiaries as dominant telecommunications entities may still exist in Hawaii."⁸

Accordingly, the commission concludes that Applicants' request for an exemption or waiver of the approval requirements of HRS § 269-19 should be denied.

Nonetheless, despite the commission's unwillingness to waive its approval requirements, the commission does find it appropriate, sua sponte, to waive the applicability of the filing requirements of HAR Chapter 6-61 to the extent that the Application is not in compliance with HAR Chapter 6-61. As discussed above, pursuant to HRS § 269-16.9, the commission has the authority to waive certain regulatory requirements relevant to telecommunications carriers. In this instance, the commission finds it in the public interest to waive the applicability of the filing requirements of HAR Chapter 6-61 to the extent that the

⁸CA SOP, at 8-9.

Application does not comply with HAR Chapter 6-61, including HAR § 6-61-75.

C.

Request for Approval of Application

HRS § 269-19 states:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added). The purpose of HRS § 269-19 is to safeguard the public interest.⁹

Moreover, under HRS § 269-7(a), the commission is empowered to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Accordingly, the commission, under HRS § 269-7(a), has the authority to examine any and all transactions of a public utility that affect or may affect the public that it serves, and will approve the Proposed Transaction

⁹See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

if it is reasonable and consistent with the public interest.¹⁰ A transaction is reasonable and in the public interest if it will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in Hawaii, as authorized by the commission.¹¹

Here, the commission finds that the Proposed Transaction is reasonable and in the public interest. As represented by Applicants, the proposed reorganization will result in significant tax savings and reduced costs to the companies allowing them to compete more effectively thereby benefiting their customers. In addition, Applicants assert that the proposed reorganization will be seamless and transparent to their customers; will not result in any changes in rates, service quality or operating terms or conditions; and will not result in a change in management.¹² As noted by the Consumer Advocate, "[e]xcept for their name changes associated with converting to limited liability companies, Applicants are expected to remain as separate entities and unchanged after the proposed transaction. Thus the proposed transaction is not expected to have any negative market-share impacts on the telecommunications industry in Hawaii."¹³

¹⁰See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

¹¹See Decision and Order No. 21715, filed on April 4, 2005, in Docket No. 05-0045, at 11-12.

¹²Application, at 5-6.

¹³CA SOP, at 10.

Based on the foregoing, the commission concludes that the Proposed Transaction should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. Applicants' request for an exemption or waiver of HRS § 269-19 or any other applicable provision of HRS Chapter 269, is denied.

2. To the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-61, the applicability of those requirements are waived, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

3. The Proposed Transaction, as described in the Application, is approved.

4. Applicants shall submit revised tariff sheets reflecting the name changes described in the Application as soon as reasonably practicable following consummation of the Proposed Transaction. Failure to comply with the requirement set forth above may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

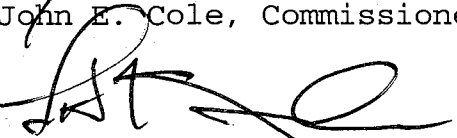
5. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii OCT - 9 2008.

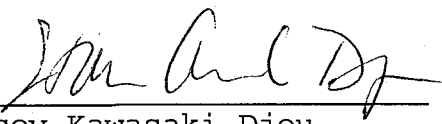
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2008-0058.eh

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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